

Building Professionals Amendment Act 2008 No 37

[2008-37]



New South Wales

Status Information

Currency of version

Repealed version for 1 March 2013 to 30 June 2020 (accessed 19 November 2024 at 2:28)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Repeal**

This Act was repealed by sec 121(b) of the [Building and Development Certifiers Act 2018 No 63](#) with effect from 1.7.2020.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Building Professionals Amendment Act 2008 No 37



New South Wales

An Act to amend the *Building Professionals Act 2005* in relation to the accreditation of accredited certifiers and other building professionals, the investigation of complaints and the taking of disciplinary action; and for other purposes.

1 Name of Act

This Act is the *Building Professionals Amendment Act 2008*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of **Building Professionals Act 2005 No 115**

The *Building Professionals Act 2005* is amended as set out in Schedules 1 and 2.

4 Repeal of Act

(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.

(2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Principal amendments

(Section 3)

[1]-[39] (Repealed)

[40] Sections 66A and 66B

Insert after section 66:

66A Limit on income derived from certification work

(1) An accredited certifier must not obtain income for certification work in respect of

development if that income exceeds the limit determined in accordance with the regulations when it is added to any other income obtained by the accredited certifier for certification work in respect of other development where the same person was involved as the owner, principal contractor or person who engages the principal contractor.

Maximum penalty: 300 penalty units.

- (2) Subsection (1) does not apply to the income that the accredited certifier concerned obtains by carrying out certification work on behalf of a council or as an employee of an accredited body corporate.
- (3) The regulations may make provision for or with respect to the following:
 - (a) the way in which any limit is to be determined for the purposes of subsection (1),
 - (b) without limiting paragraph (a), providing for any such limit to be determined by reference to the total amount of income derived during a specified period,
 - (c) what constitutes income for the purposes of this section,
 - (d) the granting of exemptions by the Board (with or without conditions) from all or any of the provisions of this section or the regulations made for the purposes of this section.

66B Limit on issue of development certificates by employed accredited certifiers

- (1) An accredited certifier who is employed or engaged by a council or is employed by an accredited body corporate must not, in the course of being so employed or engaged, issue more development certificates than the number prescribed by the regulations in respect of development that involves the same owner, principal contractor or person who engages the principal contractor.

Maximum penalty: 300 penalty units.

- (2) The regulations may make provision for or with respect to the following:
 - (a) providing for the number referred to in subsection (1) to be determined by reference to the total number of development certificates issued during a specified period,
 - (b) the granting of exemptions by the Board (with or without conditions) from all or any of the provisions of this section or the regulations made for the purposes of this section.

[41] Part 6, Division 3A

Insert after Division 3 of Part 6:

Division 3A Approval required for certain certification work

71A Accredited certifier to obtain approval before undertaking certain certification work

- (1) An accredited certifier must not, without first obtaining the written approval of the Board, carry out certification work in relation to development of a type prescribed by the regulations if the person for whom the development is carried out, or a contractor or other person carrying out the development, is a prescribed person.
- (2) An accredited certifier must comply with any conditions imposed on the approval by the Board.
- (3) The Board may refuse to grant approval under this section and must refuse in the circumstances prescribed by the regulations.
- (4) A contravention of this section by an accredited certifier is capable of being professional misconduct or unsatisfactory professional conduct.
- (5) Subsection (1) does not require the accredited certifier concerned to obtain the written approval of the Board for the carrying out of certification work as an employee of an accredited body corporate so long as the accredited body corporate has obtained that approval.
- (6) This section does not apply to the following:
 - (a) certification work carried out by an accredited certifier as an employee of a council,
 - (b) certification work of a kind referred to in paragraph (c) of the definition of **certification work** in section 3 (1).
- (7) In this section, **prescribed person** means a person included on a list kept by the Board under section 71B.

71B List of prescribed persons

- (1) The Board may keep a list of prescribed persons for the purposes of section 71A and is to make that list available on request.
- (2) The Board may include a person on the list only in accordance with the regulations.

- (3) The Board must give notice in writing to a person of its intention to include the person on the list.
- (4) The notice must include:
 - (a) the reasons why the Board is of the opinion that the person should be included on the list, and
 - (b) a statement that the person may make submissions to the Board within the period of 14 days after receipt of the notice as to why the person should not be included on the list.
- (5) The Board is to consider any submissions made to it during that 14-day period.
- (6) If, after considering any submissions, the Board determines to include the person on the list, the Board is to give the person notice in writing of its decision.
- (7) The Board may remove a person from the list at any time.
- (8) If the Board removes a person from the list, it must give notice in writing to the person of the person's removal from the list.

71C Exclusion of liability of the State and others

- (1) This section applies to civil proceedings for damages or other compensation brought against the State, the Board, a member of the Board, the Director, a member of a committee appointed under this Act or a person acting under the direction of the Board or the Director.
- (2) No amount of damages or other compensation is payable in any such civil proceedings to the extent that:
 - (a) the claim is made in connection with the exercise of any functions under this Division, and
 - (b) the claim is based on alleged negligence or other breach of duty (including statutory duty) arising because of the exercise of, or the failure to exercise, any function under this Division.

[42]-[52] (Repealed)

Schedule 2 (Repealed)